

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 333

Off-Highway Vehicles

SPONSOR(S): Workman

TIED BILLS:

IDEN./SIM. BILLS: SB 798

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	18 Y, 0 N, As CS	Brown	Miller
2)	Economic Development & Community Affairs Policy Council	14 Y, 0 N, As CS	Brown	Tinker
3)	Policy Council	22 Y, 0 N	Phillips	Hogge
4)				
5)				

SUMMARY ANALYSIS

CS/CS/HB 333 amends Section 261.03, Florida Statutes, 316.2074, F.S., and s. 317.0003, F.S., to:

- Amends the current definition of "ATV" to encompass larger, heavier vehicles;
- Creates a new statutory definition of "ROV" for recreational off-highway vehicles; and,
- Expands the current definition of "off-highway vehicle" to include ROVS.

According to the Department of Highway Safety and Motor Vehicles (DHSMV) and the Division of Forestry at the Department of Agriculture and Consumer Affairs (DOACS), the bill may have indeterminate, though positive, fiscal impact should additional off-highway vehicles be titled as a result of the bill.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

2002 Legislation

In 2002, the Legislature created Chapter 261, F.S., the "T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act."¹ This chapter creates an Off-Highway Vehicle Recreation Advisory Committee² within the Department of Agriculture and Consumer Services' (DOACS) Division of Forestry.

The committee is directed to accomplish the following:

- Establish policies to guide DOACS regarding the off-highway vehicle (OHV) recreational program and the system of off-highway vehicle recreation areas and trails;
- Make recommendations to DOACS regarding off-highway vehicle safety, training, and rider-education programs;
- Review and make recommendations regarding DOACS' proposed budget of expenditures from the trust fund;
- Make recommendations regarding all capital outlay expenditures from the trust fund; and,
- Review grant applications requesting moneys from the trust fund to create, operate, manage, or improve OHV recreation areas or trails within the state.

The Legislature also created Ch. 317, F.S., providing for OHV titling by the Department of Highway Safety and Motor Vehicles (DHSMV). DHSMV may adopt rules and prescribe forms necessary for the titling and registering of off-highway vehicles by residents of the state for use on public lands. An exemption for titling and registration is provided for non-Florida residents, governmental entities, and

¹ Sections 53 – 68, 2002-295, Laws of Florida.

² The 9-member committee is to be composed of the following:

- 3 representatives of off-highway vehicle recreation groups,
- A licensed off-highway vehicle dealer,
- A citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences;
- A representative of the Department of Highway Safety and Motor Vehicles,
- A representative of the Department of Environmental Protection's Office of Greenways and Trails,
- A representative of the Florida Fish and Wildlife Conservation Commission, and
- A representative of the Department of Agriculture and Consumer Services.

for registration of vehicles used for agricultural purposes and those rented for use from a franchisee of a public entity that controls a public beach.

OHVs are defined in s. 317.0003, F.S., as any all-terrain vehicle (ATV) or off-highway motorcycle (OHM) used off-road in this state for recreational purposes and not licensed as a motor vehicle for use on the roads. "ATV" is, in turn, defined as:

"[a]ny motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger."

2005 Legislation

In 2005, the Legislature amended statutory definitions to expressly define "two-rider ATVs," as "[a]ny ATV that is specifically designed by the manufacturer for a single rider and one passenger."³ Other changes included modifications to mirror current titling provisions for vehicles, vessels, and mobile homes, including the handling of liens, transfers of ownership, and enforcement of fraud offenses.⁴ The bill ensured that all statutory provisions dealing with encumbrances of co-owned vehicles, removal of liens from DHSMV records, cancellation of title certificates, notice and recording of liens, transfer of ownership by operation of law, and electronic or telephonic transactions for motor vehicles and mobile homes are made to apply to OHVs.

In addition, the legislation provided a process for obtaining expedited titles for OHVs and prohibited fraudulent and larcenous offenses involving OHV vehicle identification numbers, applications for title, certificates of title, and other documents. Such offenses are punishable as third-degree felonies.

The 2005 legislation imposed a fine of up to \$500 for failure to deliver title when ownership of an OHV is transferred, and authorized DHSMV to issue title validation decals to be placed on the OHV as proof that a title has been issued. DHSMV or a local tax collector may replace lost or stolen decals and may charge the fees established for motor vehicle registration validation decal issuance.

About the OHV Grant Program

The T. Mark Schmidt OHV Recreation Grant Program provides financial assistance to public agencies statewide in order to improve riding opportunities on public lands.⁵ Funding for this competitive grant program comes from the titling of OHVs (see definition above).

The Grant Program is available to any municipal or local government, state or federal agency or entity, Native-American tribal government, or legally organized nonprofit organizations. According to the program managers, grants will be made available for projects that

- improve OHV riding opportunities on public lands;
- maintain existing or new riding areas;
- provide environmental protection and restoration to affected areas in the system;
- provide enforcement of applicable regulations related to the system and off-highway vehicle activities;
- provide safety, training, and rider education in the operation of off-highway vehicles; and,
- if funds are available, acquire lands to be included in the system and manage, maintain, and rehabilitate such lands.⁶

³ 2005-164, Laws of Florida. The bill made identical changes to ch. 261, F.S., and s. 316.2074, F.S.

⁴ See ss. 317.0004 – 317.0018, F.S.

⁵ Information in this section is adapted from the grant program's website, available at <http://www.floridaohv.org/>. Last visited February 22, 2009.

⁶ *Id.*

Grants must be matched by the requesting agency, with the amount of the match explained in the grant application. Applicants can have no more than three active grant projects at one time, and the total of all three projects cannot exceed \$475,000. The Division of Forestry, in consultation with the OHV Advisory Committee, evaluates each eligible application according to program policy and assigns a final score. Based on the scores, the Division of Forestry prepares and submits a recommended priority list to the Commissioner of the Florida Department of Agriculture and Consumer Services for funding consideration.⁷

Proposed Changes

There are a number of vehicles designed for off-highway use currently on the market that exceed the size and weight limits, or otherwise do not meet the current statutory definition of ATV because of the vehicle's design. In 2008, several manufacturers⁸ of these vehicles created a new industry organization called the "Recreational Off-Highway Vehicle Association."⁹ The industry uses the terms "ROV," "UTV," or "side-by-side," to describe these larger vehicles.

CS/CS/HB 333 creates a new definition for "ROV" in Chapters 261 and 317, F.S., and modifies the definition of "off-highway vehicle" to include ROVs.

The bill states that an ROV is a vehicle:

- having a width of 60 inches or less;
- having a dry weight of 1,500 pounds or less;
- designed to travel on four non-highway tires;
- having non-straddle seating and a steering wheel; and,
- manufactured for use by one or more persons.

The definition explicitly states that it does not include a golf cart, as defined in s. 320.01(22), F.S., and 316.003(68), F.S., nor does it include a low-speed vehicle, as defined in s. 320.01(42), F.S.

CS/CS/HB 333 also amends the basic definition of "ATV" and "all-terrain vehicle" in Chapters 261, 316, and 317, F.S., to raise the maximum weight from 900 to 1,200 pounds. It also replaces the term "low-pressure tire" with "nonhighway tire," to modernize terms.

The bill provides an effective date of July 1, 2009.

B. SECTION DIRECTORY:

- Section 1** Amends s. 261.03, F.S., amending the definition of "ATV;" including ROVs in the definition of "off-highway vehicles;" providing a definition of "ROV."
- Section 2** Amends s. 316.2074, F.S., amending the definition of "all-terrain vehicle."
- Section 3** Amends s. 317.0003, F.S., amending the definition of "ATV;" including ROVs in the definition of "off-highway vehicles;" providing a definition of "ROV."
- Section 4** Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁷ *Id.*

⁸ The ROHVA website states that the association is supported by Arctic Cat, BRP, Kawasaki, Polaris, and Yamaha.

⁹ ROHVA Press Release, Nov. 10, 2008. Available online here: <http://www.rohva.org>

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain vehicles that are not currently permitted on public lands due to their weight or width may be required to apply for a title certificate as an ROV. The vehicle's owner would be required to pay a titling fee of \$29.¹⁰

D. FISCAL COMMENTS:

DHSMV states that the bill may generate an indeterminate amount of new revenue for the benefit of the OHV Grant Program by creating a definition for ROVs and allowing them to operate on state lands if properly titled. The grant program returns this revenue to local areas by means of a competitive grant program. As a result, local governments may see an indirect positive fiscal impact if the grant program is able to offer larger or additional awards for OHV projects.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 317.0005, F.S., grants rulemaking authority to the Department of Highway Safety and Motor Vehicles with regard to off-highway vehicle titling. Section 261.06(11), F.S., grants rulemaking authority to the Department of Agriculture and Consumer Services, Division of Forestry, with regard to implementing statutes regarding off-highway recreation.

Amending the definition of "ATV" in Chapters 317 and 261, F.S., could result in minor additional rulemaking in order to update forms or make other modifications to existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁰ s. 317.0007, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 4, 2009, the Roads, Bridges, and Ports Policy Committee reported the bill favorably as a committee substitute after adopting an amendment substantially modifying the bill.

The amendment creates a definition for the term “ROV,” for the class of larger off-highway vehicles currently manufactured. The definition clarifies that this does not include vehicles that meet the definition of “golf cart” as defined by s. 320.01(22), F.S., and 316.003(38), F.S., nor does it include a “low-speed vehicle,” as defined in s. 320.01(42), F.S. The amendment also modifies the general definition of “off-highway vehicle” to include ROVs.

The amendment changes the definition of “ATV,” raising the weight limit from “under 900 pounds” to “under 1,500 pounds,” and changes “low-pressure” tires to “off-highway tires.”

On April 1, 2009, the Economic Development & Community Affairs Policy Council adopted three amendments and reported the bill favorably. The amendments lowered the proposed maximum weight for an ATV from 1,500 pounds to 1,200 pounds in each of the three substantive sections of the bill.